



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2020-0452; FRL-9175-02-R4]

Air Plan Approval; NC; Removal of Transportation Facilities Rules for Mecklenburg County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg Local Implementation Plan (LIP). The revision was submitted by the State of North Carolina, through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Quality via a letter dated April 24, 2020. The revision seeks to remove transportation facilities rules from the Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP. EPA is approving these changes pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective [Insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0452. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division,

U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that, if possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9992. Mrs. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The April 24, 2020, SIP revision sought to remove Mecklenburg's transportation facilities rules from the Mecklenburg LIP. Specifically, this revision requested that EPA remove the MCAPCO rules in Article 2.0000 – *Air Pollution Control Regulations and Procedures*, Section 2.0800 – *Transportation Facilities*, comprised of Rules 2.0801 – *Purpose and Scope*; 2.0802 – *Definitions*; 2.0803 – *Highway Projects*; and 2.0804 – *Airport Facilities*.¹ EPA previously removed the State's transportation facilities rules from the North Carolina regulatory portion of the SIP on May 12, 2017. As a part of that action, EPA approved NCDAQ's September 16, 2016, SIP revision containing a demonstration showing that the repeal of the State's transportation facilities rules satisfied CAA section 110(l). Section 110(l) prohibits EPA from approving a SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the Act. North Carolina's section 110(l) demonstration was a statewide analysis

¹ NCDAQ also asked EPA to remove Rules 2.0805 – *Parking Facilities* and 2.0806 – *Ambient Air Monitoring and Analysis*. EPA is not taking action to remove these two rules because they are not in the LIP.

that included Mecklenburg County. The section 110(l) analysis associated with the removal of the State's rules from the SIP is therefore relevant to the proposed removal of Mecklenburg's rules from the LIP.

On October 28, 2021, EPA published a Notice of Proposed Rulemaking (NPRM) proposing to approve the April 24, 2020, SIP revision requesting removal of the transportation facilities rules from the MCAPCO rules incorporated into the LIP. *See* 86 FR 59678. The NPRM includes an updated 110(l) analysis and provides additional detail regarding the background and rationale for this final EPA action. Comments on the October 28, 2021, NPRM were due on or before November 29, 2021. EPA received one adverse comment on the October 28, 2021, NPRM.² This comment is available in the docket for this action. See the Response to Comment section of this final action for EPA's response.

II. Response to Comment

As mentioned above, EPA received one adverse comment on the proposed action. EPA's comment summary and response are provided below.

Comment: The Commenter expresses concern about the protectiveness of the six criteria pollutants, also known as the national ambient air quality standards (NAAQS or standards). In particular, the Commenter takes issue with how the NAAQS are measured and contends that they should be revised to include more pollutants. The Commenter further adds that air quality standards should not be relaxed in metro areas and indicates that this removal would constitute a relaxation. Additionally, the Commenter notes that metro areas with documented nonattainment should not be permitted to relax previously legislated air quality control measures. Rather, the Commenter suggests that these metro areas should be subject to additional scrutiny and surveillance. Finally, the Commenter expresses a general concern about the relationship between the six criteria pollutants and indoor air pollution.

² EPA received two adverse comments in the docket for this rulemaking; however, one of the adverse comments was intended for a separate rulemaking related to the Mecklenburg LIP. That rulemaking is associated with Docket ID No. EPA-R04-OAR-2021-0055. EPA is addressing that comment through that separate rulemaking.

Response: To the extent that the comment refers to the protectiveness and measurement of the NAAQS, EPA notes that a review of the NAAQS is outside of the scope of this rulemaking. This rulemaking did not relate to any review or change of the NAAQS in Mecklenburg County or any other area in the nation. In this rulemaking, EPA is acting solely to remove the MCAPCO rules identified in the previous section and the October 28, 2021, NPRM.

EPA notes that the Agency has a formal process for regular review of the six criteria pollutants to determine whether the standards set for each are still protective of human health and the environment. Pursuant to CAA sections 108 and 109, EPA must thoroughly review each NAAQS every five years to account for the latest scientific knowledge regarding the effects of the air pollutant on public health and welfare.³ EPA solicits public comment as part of each five-year review and invites the Commenter to share recent scientific discoveries and concerns regarding air pollution during those comment periods. Further, EPA refers the Commenter to EPA's website at <https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards> to learn more about EPA's process for reviewing the NAAQS.

In 2021, the EPA Administrator announced the Agency's intention to review the standards for ozone and particulate matter on a schedule more expeditiously than required by the CAA.^{4,5} EPA notes that the air quality standards are not legislated but are established through a notice and rulemaking making process that allows for anyone to submit a comment on proposed rules. The Commenter should use the public comment periods associated with those reviews to express concerns about the protectiveness of the standards. Additionally, EPA notes that

³ See <https://www.epa.gov/criteria-air-pollutants/process-reviewing-national-ambient-air-quality-standards> for information regarding EPA's five-year NAAQS review process.

⁴ See <https://www.epa.gov/ground-level-ozone-pollution/epa-reconsider-previous-administrations-decision-retain-2015->

ozone#:~:text=EPA%20will%20ensure%20the%20Clean,2023%20to%20complete%20this%20reconsideration for information regarding EPA's announcement to reexamine the 2020 decision to retain the 2015 ozone NAAQS.

⁵ See <https://www.epa.gov/newsreleases/epa-reexamine-health-standards-harmful-soot-previous-administration-left-unchanged> for information regarding EPA's announcement to reexamine the December 2020 decision to retain the 2015 particulate matter NAAQS.

standards for the criteria pollutants are established to apply nationwide and are not “relaxed” in individual areas.

While EPA sets the NAAQS, states play a primary role in implementation. The CAA establishes a system of cooperative federalism that sets specific roles for EPA and the states. In this system, EPA provides national leadership and sets national standards for environmental protection, such as the NAAQS.⁶ Under CAA section 110, states have broad discretion to choose the mix of emission limitations and other control measures, means, or techniques that they will implement (or update) through a SIP to provide for attainment and maintenance of the NAAQS. EPA’s role, with respect to a SIP revision, is focused on reviewing the submission to determine whether it meets the minimum criteria of the CAA. Where it does, EPA must approve the submission. When approving a SIP revision, the Agency is not establishing its own requirements for the state to implement. If, at any time, EPA finds that a SIP is inadequate to attain or maintain the relevant NAAQS or otherwise does not comply with the CAA, EPA has the authority under CAA section 110(k)(5) to require the state to revise its SIP to correct such inadequacies.

For this rulemaking, EPA has concluded based on the 110(l) analysis, that the removal of the transportation facilities rules from the Mecklenburg LIP would not weaken or remove any pollution controls or interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. As discussed in the October 28, 2021, NPRM, there are no nonattainment areas in Mecklenburg County, the transportation facilities rules are no longer federally required, Mecklenburg County issues few transportation facility permits, the issued permits do not require emissions controls, and the relevant NAAQS are not threatened.

With respect to the Commenter’s concern about the relationship between the NAAQS and indoor air pollution, the CAA does not require states to control indoor air pollution.

⁶ See <https://www.epa.gov/criteria-air-pollutants/naaqs-table> for information regarding the current NAAQS.

Congress did not design the CAA (including the SIP process, NAAQS pollutants, or area nonattainment delegations) to have any effect on indoor air pollution.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. EPA is finalizing the removal of MCAPCO Section 2.0800 – *Transportation Facilities*, including Rules 2.0801 – *Purpose and Scope*; 2.0802 – *Definitions*; 2.0803 – *Highway Projects*; and 2.0804 – *Airport Facilities*, which are incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the SIP generally available at the EPA Region 4 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Final Action

EPA is removing the MCAPCO rules under Article 2.0000 – *Air Pollution Control Regulations and Procedures*, Section 2.0800 – *Transportation Facilities*. Specifically, EPA is removing Rules 2.0801 – *Purpose and Scope*; 2.0802 – *Definitions*; 2.0803 – *Highway Projects*; and 2.0804 – *Airport Facilities*, in their entirety, from the LIP. As a result of this removal, no Section 2.0800 rules will be in the LIP, so EPA is removing Section 2.0800 – *Transportation Facilities* in its entirety. EPA is taking final action to approve these changes to the LIP because they are consistent with the CAA.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days from date of publication of this document in the FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 28, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

For the reasons stated in the preamble, EPA amends 40 CFR part 52 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II - North Carolina

§52.1770 [Amended]

2. In §52.1770(c)(3), the table is amended by removing the heading for “Section 2.0800 Transportation Facilities,” and the entries for “Section 2.0801,” “Section 2.0802,” “Section 2.0803,” and “Section 2.0804.”

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